

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE ROLEX WATCH, SERIAL
NUMBER K973334,

Defendant.

CASE NO. C05-1320JLR

ORDER

I. INTRODUCTION

This matter comes before the court on the motion of the United States (the “Government”) for a restraining order to preserve the availability of the Defendant property pending a resolution of this action (Dkt. # 8). No party has requested oral argument, and the court finds this matter appropriate for disposition based on the parties’ briefing and supporting documentation. For the reasons stated below, the court GRANTS the motion.

II. BACKGROUND

In November 2004, the Government executed a search warrant at the residence of claimant Alexander Milman as part of an investigation of alleged health care fraud and money laundering. Among other items, the Government seized the Defendant property, a

1 Rolex watch (the “Rolex”). Mr. Milman moved to recover the Rolex and other property
2 under Fed. R. Crim. P. 41(g) (No. 04-635M, Dkt. # 7).¹ The Government attempted to
3 preserve the Rolex under administrative forfeiture law, but did not give Mr. Milman
4 notice of the proceeding within 60 days as 18 U.S.C. § 983(a)(1)(A)(i) requires.
5 Magistrate Judge Mary Alice Theiler issued an order on Mr. Milman’s motion, finding
6 that the Government could not retain the Rolex (and other property) under administrative
7 forfeiture rules because it had not given timely notice to Mr. Milman. (04-635M, Dkt.
8 # 15). Judge Theiler also found that under Rule 41’s “reasonableness under all
9 circumstances” test, Mr. Milman was entitled to the property. Id. Judge Theiler noted
10 that the Government could commence a civil forfeiture proceeding if it wished to pursue
11 the Rolex. Id. After the hearing on the Rule 41 motion, but before Judge Theiler’s order,
12 the Government filed its complaint in this proceeding. After Judge Theiler entered her
13 order, the Government filed the instant motion. Judge Theiler stayed her ruling releasing
14 the Rolex until today so that the court could consider this motion. (04-635M, Dkt. # 17).
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17 18 III. ANALYSIS

19 The Government seeks a restraining order allowing it to retain possession of the
20 Rolex. Under 18 U.S.C. § 983(j)(1), the court can enter a restraining order or “take any
21 other action to seize, secure, maintain, or preserve the availability of property subject to
22 civil forfeiture.” The statute is silent, however, as to the standard the court should apply
23 in deciding whether to take such action.
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25 The Ninth Circuit has yet to consider the appropriate standard for a restraining
26 order in a civil forfeiture case, but the Fifth Circuit has. In United States v. Melrose E.

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28 ¹The court notes that Judge Theiler unsealed the record in Case No. 04-635M on
September 23, 2005.

1 Subdivision, 357 F.3d 493 (5th Cir. 2004), the court announced that “probable cause is
2 the proper standard of proof for continuing a pretrial restraining order” under 18 U.S.C.
3 § 983(j)(1)(A).

4 The Government asks the court to adopt the probable cause standard here. Mr.
5 Milman does not contend that a different standard applies in this circuit. The court thus
6 reviews the Government’s motion under the probable cause standard.

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8 The court finds that the Government has established probable cause that the Rolex
9 is subject to forfeiture. The court has reviewed the potential bases for civil forfeiture
10 under § 981(a). It has also reviewed the only source of evidence before the court, the
11 complaint in this action, which Internal Revenue Service Special Agent Julie Lau verified.
12 See Lopez v. Smith, 203 F.3d 1122, 1132 n.14 (9th Cir. 2000) (noting that a verified
13 complaint may serve as evidence). The complaint contains allegations that Mr. Milman
14 purchased the Rolex with a check from a business account, and that half of the proceeds
15 deposited into that account were obtained through Medicare and Medicaid fraud. The
16 complaint states that the Government arrived at these conclusions after Ms. Lau and
17 others conducted an investigation of Mr. Milman and his businesses. After considering
18 these verified allegations, and Mr. Milman’s failure to put forth any evidence in
19 opposition, the court finds that the Government has established probable cause that the
20 Rolex is property subject to forfeiture. See 18 U.S.C. § 981(a)(1)(C).

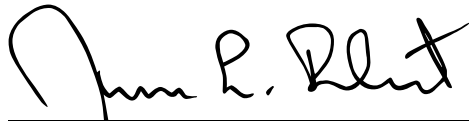
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22 The court notes that its ruling today is without prejudice to Mr. Milman’s right to
23 put forth evidence establishing that the Rolex is not subject to civil forfeiture. On the
24 motion before the court, however, Mr. Milman has offered no such evidence. The court
25 thus grants the Government’s motion based on the allegations made in its verified
26 complaint. See United States v. \$191,910.00 in United States Currency, 16 F.3d 1051,
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1 1068 (9th Cir. 1994) (noting that Government must have probable cause before
2 commencing a judicial forfeiture action).

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4 **IV. CONCLUSION**

5 For the reasons stated above, the court GRANTS the Government's motion for a
6 restraining order (Dkt. # 8). The Government may retain possession of the Rolex until
7 further order of the court.
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9 DATED this 3rd day of October, 2005.

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13 JAMES L. ROBART
14 United States District Judge
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